Executive Summary
Direct Investigation Report

Monitoring of Outsourced Street Cleansing Services by the Food and Environmental Hygiene Department

Introduction

Cleansing services for streets in Hong Kong are mainly the responsibility of the Food and Environmental Hygiene Department (“FEHD”). Since 2000, the Department has been outsourcing street cleansing services to cleansing contractors (“contractors”) through tendering and contracting procedures. There have been public views that the process or practice of awarding contracts to the lowest bidder has led to inconsistent and varying service quality, and that FEHD’s monitoring of the performance of contractors is inadequate, resulting in frequent piling of rubbish on streets, thereby affecting environmental hygiene. Against this background, this Office initiated this direct investigation to examine the Government’s monitoring mechanism for outsourced street cleansing services and its effectiveness, with a view to making recommendations for improvement to the Government where necessary.

Our Findings

2. On FEHD’s management of outsourced street cleansing services, including its tendering mechanism, the Demerit Points System (“DPS”) and its day-to-day monitoring work, we have the following comments.

Tendering Mechanism for Selecting Contractors

3. FEHD’s tendering exercises for street cleansing contracts have all along been conducted in accordance with the Government’s procurement regulations and procedures by adopting the “marking

scheme" approved by the Central Tender Board for tender evaluation. Prior to 1 April 2019, the weightings accorded to "price score" and "technical score" under the marking scheme were respectively 70% and 30% of the total score. The 2018 Policy Address initiated an adjustment: for service contracts involving non-skilled employees tendered on or after 1 April 2019, the weightings of "price score" and "technical score" under the marking scheme were modified to become 50%:50%. FEHD then followed suit in its tender evaluation. Between April 2019 and March 2020, a total of 14 street cleansing service contracts were awarded by FEHD, of which 10 (71%), as compared to 40% in the past, were not awarded to the lowest price bidders, indicating a departure from the past when the "lowest bid wins" situation prevailed. Of these 14 service contracts, the winning contractors were ranked either first or second in "technical score" among the bidders.

4. We consider it a positive move by FEHD to adopt the new 50%:50% weighting of "price score" and "technical score" in the tendering exercises for street cleansing service contracts, as it has tackled the problem at source by imposing a more stringent technical requirement. The change has just taken place for about a year, and as at March 2020, only 14 new service contracts have been awarded. We, therefore, consider that FEHD should closely monitor the street cleansing services tendered in or after April 2019 to see whether service quality has improved, conduct timely reviews as necessary and report the findings to the Government with a view to further refining the tendering mechanism. In particular, FEHD should pay constant attention to the welfare of non-skilled workers of contractors, identify any room for improvement and take corresponding action where warranted in order to enhance protection for frontline cleansing workers' well-being, thereby enhancing the services delivered by contractors.

Monitoring Mechanism for Performance of Contractor

<u>DPS and Default Notices of limited deterrent effect</u>

5. FEHD relies heavily on the issuance of various types of

Default Notices ("DNs") in tackling problems associated with poor services of contractors. The DPS is only applicable to "employment-related" defaults and does not cover "poor performance" of contractors.

6. Under the current DPS, FEHD had only issued one DN and given one demerit point to a contractor for "employment-related" defaults in 2018 and 2019. During the 10 years between April 2009 and March 2019, no contractor had accumulated three demerit points over a rolling period of 36 months immediately preceding the month of a tender closing date to cause its disqualification from tendering. This shows that insofar as "employment-related" defaults are concerned, the DPS has been effective in monitoring contractors' compliance with obligations in employment issues. In situations where DNs are ineffective (see paras. 7-11 below), FEHD should consider widening the scope to include "poor performance" in the DPS in order to step up monitoring of the service quality of contractors.

7. Take the street cleansing service contracts tendered in 2019 as examples. The lowest contract price for a two-year service contract awarded by FEHD was $39.72 million and the highest was $158.52 million. The average contract price was $109.71 million. In 2019, FEHD issued a total of 2,162 verbal and written warnings and 1,157 DNs to trigger deduction of monthly service charge for defaults of contractors. The total amount of deduction was about $2.75 million, equivalent to an average deduction of about $81,000 for each of the 34 service contracts in force in 2019.

8. The system of deducting monthly service charge by FEHD has not incorporated any deterrent element. The amount deducted represents only the administrative cost recovered by the Department for supervising the contractor in discharging its contractual duties. It can hardly create sufficient deterrent effect on the contractors in breach of contractual obligations.

9. We are of the view that even though the deduction is not a "fine", the deduction amount should create deterrent effect so that

contractors will be vigilant and take steps to avoid recurrence. In fact, the price of each contract awarded to a contractor ranged from tens of millions to more than a hundred million dollars. In comparison, the deduction in monthly service charge was relatively insignificant and cannot create adequate deterrent effect on contractors with unsatisfactory performance.

10. FEHD stated that the more DNs a contractor has received, the lower its score in “past performance” would be, which may in turn affect its chance of tender award. We have scrutinised the 14 street cleansing service contracts awarded by FEHD between April 2019 and March 2020, and found that the successful tenderers of the 14 service contracts only scored between 0 and 3 in “past performance” (the full score being 7.5 for this item). The variation was only 3 marks. Among them, 6 scored 3 in “past performance” and 2 scored 1.5. The remaining 6 scored 0 and ranked last among the tenderers in this item; yet, they were still awarded the tender eventually. We find that the unfavourable effect of DNs and “past performance” score on contractors was not impactful. An unsatisfactory score in “past performance” does not necessarily cost a contractor a new service contract.

11. We notice that in tender evaluation, FEHD normally would only give a score between 0 and 3 for “past performance”. This indicates that FEHD had not fully utilised the 7.5 marks accorded to the item for distinguishing good from bad “past performance”. This may weaken the deterrent effect that DNs and “past performance” assessment would have on contractors.

<u>Current monitoring mechanism fails to incentivise contractors to improve services rendered by employees</u>

12. Currently, FEHD seeks to ensure compliance of contractual requirements through enforcement action and supervision on services of contracts. Nevertheless, save for encouraging tenderers to include “innovative proposals” in their tenders under the new tendering mechanism effective since 1 April 2019, FEHD’s current monitoring mechanism includes no measures that directly

incentivise contractors to proactively improve services rendered by their employees after obtaining a contract. Under the current mechanism, a contractor’s chance of contract award would not be affected so long as it meets the minimum contract requirements on the existing contract and avoid demerit points or DNs from FEHD. The mechanism fails to motivate contractors to improve the services rendered by their employees.

13. We consider that contractors delivering services that just meet contract requirements can only reach the minimum standard of compliance. For continuous improvements in service quality and in recognition of the excellent performance of some contractors and their employees, FEHD should consider setting up an incentive or reward system outside the current enforcement framework so that contractors would have greater motivation to enhance service quality.

Effectiveness of Monitoring Efforts

Lack of regulatory coordination

14. On whether the day-to-day performance of contractors complies with the contract requirements, FEHD relies on the contract management staff of its 19 District Environmental Hygiene Offices (“DEHOs”) to conduct inspections, regulatory examinations and take enforcement action on contractors. If non-compliance with contract requirements is found during day-to-day inspections and regulatory examinations, the contract management staff would take enforcement action to issue DNs to contractors concerned and deduct their monthly service charge.

15. We consider that FEHD should monitor the overall performance of individual contractors, identify and recognise contractors with excellent performance to encourage other contractors to follow their examples. It should also implement specific measures to help contractors with substandard performance to improve. However, the system for management and monitoring of the overall performance of individual contractors is

not a coordinated one. The monitoring responsibility is taken up individually by DEHOs. Our investigation found that while the DEHOs have separately maintained data of cases in which contractors have been issued DNs and had their monthly service charge deducted because of poor performance, statistical analysis on such data had not been carried out. Consequently, FEHD has no clear idea as to which contractors have performed relatively less satisfactorily.

Lower ratios of inspections by Quality Assurance Section during non-office hours, weekends and holidays

16. One of the functions of the Central Quality Assurance Section ("QAS") is to monitor contractors' performance in providing mechanical cleansing services. Our investigation found that inspection ratios of the QAS during non-office hours, weekends and holidays were relatively low. Data between 2015 and 2019 show that, of all the inspections conducted by the QAS, 72% to 82% were conducted on weekdays, 18% to 28% were on weekends and holidays; 68% to 76% were conducted during office hours, 24% to 32% were during non-office hours. Many popular spots of tourist attraction and consumption require enhanced cleansing services during the night time, weekends and holidays because of heavy flow of visitors, and contractors would continue to provide cleansing services during non-office hours. We, therefore, hold the view that the QAS should step up its inspections during non-office hours, weekends and holidays.

Failure to make good use of complaint data and compile a list of hotspots of complaints about street cleanliness

17. There are a lot of hotspots of complaints about street cleanliness in the territory and members of the public and Members of the District Councils ("DCs") and Legislative Council ("LegCo") have expressed concerns and made complaints about these locations. Between 2015 and 2019, FEHD had received 56,821 to 69,423 complaints about street cleansing services each year. The number of complaints shows a rising trend.

18. However, FEHD has not drawn up a list of hotspots of complaints about street cleanliness. FEHD explains that the follow-up actions taken in respect of each complaint at various locations and the before-and-after situation of that locations were recorded on its complaint management information system. It will also explore long-term measures to continuously monitor the contractors to ensure improvement in service quality. However, it had not provided us with illustrated examples other than figures of its prosecution actions. We consider that good complaint management is conducive to a department's proper use of resources and service improvement. The details and types of complaints, the locations and times concerned, as well as other relevant data can help the department understand and analyse the problems and eventually identify inadequacies. With regard to street cleansing services, FEHD should make good use of complaints and views received from different channels, grasp relevant information for in-depth analysis so as to understand public concerns and service gaps of contractors. This will facilitate systematic deployment of resources to resolve persistent problems.

19. Our investigation confirmed that FEHD had followed up on daily complaints, kept in touch with the DCs and local groups for handling individual complaints and issues at locations of concern. The Department had also drawn up a list of "illegal refuse deposit blackspots" and installed Internet Protocol cameras at these locations, which had facilitated its efforts in monitoring and combating the problem of illegal deposit of refuse. However, illegal refuse deposit is just one of the problems at environmental hygiene blackspots. Other problems, such as the cleanliness of streets near market stalls, locations where wild pigeons and birds frequent, back alleys of restaurants etc. also constantly attract public concern. We consider that FEHD should make good use of the data entered into its computer system after inspections, combine such data with the information received from outside sources and conduct analysis with a view to compiling a list of hotspots of complaints about street cleanliness for different districts and reviewing the list periodically. It should formulate specific measures and require contractors to

step up cleansing services at these locations constantly. Furthermore, with respect to the list of hotspots of complaints about street cleanliness, FEHD should consider devising guidelines for follow-up actions and require contractors to enhance cleansing services at these locations.

20. We understand that environmental hygiene problems may involve the jurisdiction of other Government departments and require their assistance and collaboration for proper handling. As such, FEHD may refer the problems involved in hotspots of complaints about street cleanliness and update the list from time to time to facilitate more effective management of the hygiene condition at the hotspots.

Continuous Improvement in Service Efficiency of Contractors

21. FEHD has been bringing in new technologies from time to time and adopting mechanisation and automation techniques. For example, it has increased the number of street-washing vehicles and grab lorries, and explored the option of procuring more small mechanical sweepers for continuous improvement in contractors' service efficiency. We consider these measures effective in allowing contractors more room for re-deploying resources, thereby further enhancing their services in the other aspects specified in the contract. For instance, the time and manpower resources thus released can be deployed to focus on improving the cleanliness of environmental hygiene blackspots.

Monitoring of and Support for Contractors in Protecting Frontline Cleansing Workers during the Pandemic

22. It is stated clearly in the relevant legislation and service contracts signed between FEHD and contractors that the contractors, as employers, have a duty to safeguard the occupational health and safety of their frontline cleansing workers. Although street cleansing services have been outsourced to contractors, FEHD still owns the responsibility to monitor the contractors' compliance with relevant legislation and contract requirements in providing legal and proper protection to their frontline cleansing workers. FEHD should follow up and take enforcement action in a timely manner when a contractor fails to comply with relevant legislation and contract requirements.

23. Concerning the shortage of supply of protective gear during the pandemic in early 2020, we notice that FEHD had gradually increased the number of face masks distributed to contractors between February and May of the year, and taken measures to ensure priority delivery of face masks to their frontline workers. Given the acute shortage of supply of protective gear around that time, which was a well-known fact, it was really not easy for frontline workers to maintain street cleansing services under the situation. FEHD should learn from the experience during the

pandemic, proactively intervene and provide support when the contractors have tried their best but still failed to provide their employees with due protection (e.g. failure in procuring sufficient protective gear). This can ensure that the protection of workers' occupational health and safety, such that they can help maintain street cleansing services, keep the environment hygienic and help fight the pandemic.

Recommendations

24. In light of the above, The Ombudsman has made the following recommendations to FEHD:

(1) closely monitor whether the quality of street cleansing services tendered on or after 1 April 2019 has improved, conduct timely reviews of service efficiency as necessary and report the findings to the Government with a view to further refining relevant tendering mechanism;

(2) explore with the relevant policy bureau the mechanism or measures for rectifying the unsatisfactory performance of contractors. In particular, FEHD may consider including "poor performance" in the DPS, or setting up a new system with reference to DPS under which demerit points may be given to contractors against serious defaults in performance so as to achieve greater deterrent effect;

(3) review the mechanism for deducting monthly service charge. Include a deterrence element in calculating the amount of deduction, so that the effect of the deduction would not be limited to recovering the administrative cost only but also deterrent. Contractors would then be more proactive in enhancing service performance;

(4) review the marking scheme for tender evaluation and utilise fully the scores for distinguishing good from bad

"past performance" such that DNs can exert stronger deterrent effect on contractors;

(5) consider formulating more proposals that offer greater motivation to contractors to proactively enhance the service quality of their employees. Encouragement should be given when the performance of contractors and their employees exceeds requirements;

(6) review the regulatory regime to monitor the overall performance of contractors, conduct analysis on complaint data to facilitate the monitoring of contractors in improving performance;

(7) step up the QAS inspections during non-office hours, weekends and holidays. Arrange inspections in a flexible manner in accordance with inspection results and needs, so as to better meet the inspection objective;

(8) compile and analyse information of complaints about poor street cleansing services frequently lodged by members of the public/the DCs and LegCo/local groups, like details of unsatisfactory performance and locations concerned; draw up a list of hotspots of complaints about street cleanliness to constant monitoring and consider devising guidelines for follow-up such that timely actions can be taken to strengthen cleansing services and improve the situation;

(9) continue to explore and bring in new technologies to enhance the efficiency of street cleansing services; and

(10) keep a close watch on the pandemic and situations unforseeable at the time of drawing up service contracts. Intervene proactively and provide thorough support as needed in order to protect the occupational health and safety of workers and maintain the standard

of street cleansing services.

Office of The Ombudsman
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